IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.11.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Crl.O.P. No.5116 of 2006
& Crl.M.P. No.1299 of 2006

M.Senthilkumar ... Petitioner/Single Accused

vs.

Seven Seas Shipping Services
by its Proprietor Surendranath
K.G.Pillai, son of Govindan Kurup
represented by its Power of Attorney
Smt. Nagalakshmi, wife of Rajan,
aged about 40, Branch Manager,
72, Ashernagar 3rd Street,
Tiruppur, Coimbatore District. ... Respondent/Complainant

Petition under Section 482 of the Code of Criminal Procedure to quash the proceedings pending against the petitioner in STC No.2457 of 2005 on the file of learned Judicial Magistrate No.II, Tiruppur.

For petitioner : Mr.P.M.Duraiswamy
For respondent : Mr.T.Venugopalan

O R D E R

The petitioner herein, who is the sole accused for an offence punishable under Section 138 of the Negotiable Instruments Act, in S.T.C. No.2457 of 2005, on the file of Judicial Magistrate-II, Tirupur, seeks to quash the aforesaid proceedings pending against him.

2. The following points have been agitated by the learned counsel for the appellant for the purpose of quashing the proceedings,

(a) The complaint has been initiated through Power Agent and for such purpose, a power of attorney document has been relied upon. The complainant/company is situated at Mumbai and the document was prepared at Mumbai. The last paragraph of the power of attorney is to the following effect:-

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" In witness, I Surendranath K.G. Pillai do hereby subscribed this power of attorney on this 15th day of June 2005 at Mumbai, signed sealed and delivered by me."

That being so, the document has been endorsed by an Advocate & Notary at Tirupur on 18.06.2005, which would only suggest that the power of attorney is not authenticated as required under Section 85 of the Evidence Act; thus, the complaint lodged by the power agent is not maintainable at all.

(b) The proprietor has given power to the power agent. It has been mentioned in the complaint as if the Firm is the complainant represented by its Proprietor, in which case, the Firm should have given power to the Agent, but, the recitals of the document show as if power has been given by the proprietor. Therefore, the person appointed as power agent to represent the Concern has no legal sanction to file the private complaint. As a consequence, the private complaint initiated is not maintainable.

(c) The legal notice, dated 16.05.2005, came to be issued on the instructions of the Firm, which is not a legal entity, and it has not been issued by the proprietor of the concern. Thus, the legal notice not having been issued in consonance with the provisions under Section 138 of the Negotiable Instruments Act, the learned Magistrate should not have taken cognizance of the offence.

3. Per contra, learned counsel appearing for the respondent/complainant submits that the correctness and authenticity of the document may have to be examined only during the course of trial and, if necessary, oral and documentary evidence may be adduced by both the parties. Merely on presumption, issues involving factual aspects cannot be decided one way or other.

4. I have perused the materials available on record and carefully considered the rival contentions made by the counsel appearing on either side. Inasmuch as the points raised by the learned counsel for the petitioner purely involve questions of fact, the same may have to be raised and agitated only during the course of trial. Hence, without expressing any opinion on the points agitated, I am of the considered view that this is not a fit case to quash the proceedings. However, the petitioner is at liberty to raise the above points before the trial court.

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5. With the above observation, the Criminal Original Petition is dismissed. Connected Miscellaneous Petition is closed.

Considering the delay and nature of dispute involved, the trial court is directed to dispose of the case within a period of six months from the date of receipt of copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Judicial Magistrate No.II,
Thirupur.

2. The Chief Judicial Magistrate,
Coimbatore.

1 cc To Mr.T.Venu Gopalan, Advocate, SR.70838.

Crl.O.P. No.5116 of 2006
& connected Misc. Petition.

CU(CO)
RVL 12.12.2007

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